

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

**Grain Handling Facility at Freeman
Spokane County, WA**

ENFORCEMENT ORDER

No. DE 12863

TO:

Union Pacific Railroad Company
Cenex Harvest States

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	JURISDICTION	2
III.	PLPS BOUND	2
IV.	DEFINITIONS	2
V.	FINDINGS OF FACT	3
VI.	ECOLOGY DETERMINATIONS	5
VII.	WORK TO BE PERFORMED	7
VIII.	TERMS AND CONDITIONS	9
	A. Public Notice	9
	B. Remedial Action Costs	9
	C. Designated Project Coordinators	10
	D. Performance	10
	E. Access	11
	F. Sampling, Data Submittal, and Availability	12
	G. Retention of Records	13
	H. Resolution of Disputes	13
	I. Extension of Schedule	14
	J. Endangerment	16
	K. Reservation of Rights	17
	L. Transfer of Interest in Property	17
	M. Compliance With Applicable Laws	17
IX.	SATISFACTION OF ORDER	19
X.	ENFORCEMENT	19

EXHIBIT A	Site Diagram
EXHIBIT B	Scope of Work and Schedule
EXHIBIT C	Public Participation Plan
EXHIBIT D	Union Pacific Railroad Company Site Access Requirements

I. INTRODUCTION

The objective of the State of Washington, Department of Ecology (Ecology) under this Enforcement Order (Order) is to require remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Union Pacific Railroad Company (UPRR) and Cenex Harvest States (CHS) (hereafter referred to as the potentially liable persons or "PLPs" to conduct a Remedial Investigation and Feasibility Study (RI/FS) for contamination at the Grain Handling Facility at Freeman. The site is generally located at 14603 Highway 27 in Freeman, Washington. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Enforcement Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PLPS BOUND

This Enforcement Order shall apply to and be binding upon the PLPs. To the extent allowed by law, changes in ownership or corporate status shall not alter the PLP's responsibility under this Order. The PLPs shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Grain Handling Facility at Freeman and is generally located at 14603 Highway 27, Freeman, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is generally described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

B. Potentially Liable Persons (PLPs): Refers to Union Pacific Railroad Company and Cenex Harvest States.

C. Enforcement Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are an integral and enforceable part of this Order. The terms “Enforcement Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the PLPs:

A. The Grain Handling Facility at Freeman (Facility) is located in the town of Freeman, Washington, approximately 20 miles southwest of Spokane, at 14603 Highway 27, Freeman, Washington. The Facility is a seasonally active grain handling facility consisting of 11 steel grain silos/bins and one steel grain elevator, as well as a subterranean receiving pit. The Facility was constructed by Rockford Grain Growers in approximately 1955, and active use of the Facility is thought to have begun shortly after construction. CHS purchased the Facility from Rockford Grain Growers in 1993 and is the current owner/operator.

B. UPRR is the current and historic owner of the underlying property on which the CHS Facility is located. UPRR owns and operates a railway line that traverses the property and roughly parallels State Highway 27.

C. The Freeman School District’s (District’s) elementary, middle, and high schools are located in a large campus complex directly west and immediately across Highway 27 from the Facility. Water supply for the Freeman School District campus is collected from a well on the District’s property. In 2008, a groundwater sample collected from the District’s water supply well detected carbon tetrachloride at 7.78 micrograms per liter ($\mu\text{g/L}$), above the Safe Drinking Water Act Maximum Contaminant Level of 5 $\mu\text{g/L}$. From 2012 to 2013, six of the ten groundwater samples collected from the District’s water supply well detected carbon tetrachloride above 5 $\mu\text{g/L}$.

D. In 2012, as part of a recent facility expansion, the Freeman School District acquired some property located between the original school district property and the UPRR property/CHS Facility. A former domestic well (the (b) (6) well) was located on the acquired School District property, approximately 250 feet southwest of, and downgradient from, the Facility. A groundwater sample collected from the (b) (6) well on May 30, 2012 detected carbon tetrachloride as high as 48.1 µg/L.

E. In 2013, the Freeman School District installed an air stripper water treatment system. Groundwater samples indicate the air stripper is reducing the contaminant concentrations to below detection limits of 0.1 ug/L.

F. In 2013, the Environmental Protection Agency ("EPA") conducted a Preliminary Assessment ("PA") to determine the potential threat to public health or the environment posed by contamination related to the Freeman school well. The results of the Preliminary Assessment are set forth in an April, 2013, report prepared by Ecology and Environment, Inc. (*Freeman Ground Water Contamination, Freeman, Washington Preliminary Assessment*, Ecology and Environment, Inc. (2013)). The PA report identified the Facility as the most likely source of the groundwater contamination due to the ubiquitous use of carbon tetrachloride as a fumigant at grain operations throughout the United States from approximately 1911 until 1986. The PA recommended further investigation, including a Site Investigation.

G. EPA conducted a Site Inspection ("SI") in 2014 to further evaluate the potential threat to public health or the environment posed by the Site, determine the potential for a release of hazardous constituents to the environment, and determine the potential for placement of the Site on the National Priorities List ("NPL"). The results of this effort and associated soil and groundwater sampling are set forth in a July 2014 SI report, also prepared by Ecology and Environment, Inc. (*Site Inspection, Freeman Groundwater Contamination, Freeman, Washington*, Ecology and Environment, Inc. (2014)). The SI report confirmed the presence of carbon tetrachloride in soil at the UPRR property. Specifically, carbon tetrachloride was detected in six

of the soil borings on the UPRR property immediately adjacent to the Facility, with concentrations ranging from 3.21 to 15 µg/kg. On March 26, 2015, EPA proposed the Site for listing on the NPL.

H. The full extent of the contamination, and therefore the full extent of the Site, has not yet been determined. However, based upon currently available information, the Site generally extends from the UPRR property on the north to the entire School District property to the south.

I. In certified correspondence dated February 17, 2015, Ecology notified UPRR of the preliminary finding of potential liability and requested comment on that finding.

J. In certified correspondence dated February 9, 2015, Ecology notified CHS of the preliminary finding of potential liability and requested comment on that finding.

K. In certified correspondence dated May 8, 2015, Ecology notified UPRR of its status as a potentially liable person with regard to the release of hazardous substances at the Site.

L. In certified correspondence dated May 12, 2015, Ecology notified CHS of its status as a potentially liable person with regard to the release of hazardous substances at the Site.

M. In certified correspondence dated July 6, 2015, Ecology invited CHS and UPRR to participate in Agreed Order negotiations for the completion of a Remedial Investigation and Feasibility Study (RI/FS). The Agreed Order negotiation period was 60 days.

N. On August 18, 2015, UPRR and CHS notified Ecology they were terminating their participation in the Agreed Order process, and requested that Ecology issue an Enforcement Order for work at the Site.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the PLPs.

A. Union Pacific Railroad Company and Cenex Harvest States are “owners or operators” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to UPRR dated February 17, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that UPRR is a PLP under RCW 70.105D.040 and notified UPRR of this determination by letter dated May 8, 2015.

D. Based upon credible evidence, Ecology issued a PLP status letter to CHS dated February 17, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that CHS is a PLP under RCW 70.105D.040 and notified CHS of this determination by letter dated May 8, 2015.

E. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

F. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the

Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein:

A. The work to be performed includes the planning, implementation, and reporting on the conduct of a Remedial Investigation and Feasibility Study (RI/FS). Attached hereto as Exhibit B is a Scope of Work for the completion of an RI/FS. Exhibit B is incorporated by reference as an integral and enforceable part of the Order.]

B. The PLPs shall submit all necessary work plans to implement the Scope of Work to Ecology for review and approval according to the Schedule of Deliverables contained in Exhibit B. Upon approval by Ecology, the PLPs will proceed with field implementation of the Work Plans in accordance with an agreed upon schedule.

C. Work Plans shall consist of a detailed description of site conditions, work to be performed, personnel requirements, and schedules for implementation and deliverables for the following:

1. TASK I. Project Plan including RI Work Plan, Sampling and Analysis Plan, and Health and Safety Plan.
2. TASK II. Conduct RI Field Investigations.
3. TASK III. Remedial Investigation/Feasibility Study Report.

These work plans and each element thereof shall be designed, implemented, and completed in accordance with MTCA (Chapter 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all applicable federal, state, and local laws and regulations.

D. After receipt of a deliverable plan, technical report, agency review draft, public review draft, or final document, Ecology will provide written notification to the PLPs of approval or disapproval. If not approved, Ecology will specify deficiencies and necessary changes.

E. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

F. All plans or other deliverables submitted by the PLPs for Ecology's review and approval under the Scope of Work and Schedule (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

G. If the Parties agree on an interim action under Section VI.E, the PLPs shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLP shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the PLPs are required to conduct the interim action in accordance with the approved Interim Action Work Plan.

H. If Ecology determines that the PLPs have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, perform any or all portions of the remedial action or at Ecology's discretion allow the PLPs opportunity to correct. The PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

I. Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

VIII. TERMS AND CONDITIONS

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for or on the Site under RCW 70.105D, including remedial actions and Order preparation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

C. Designated Project Coordinators

The project coordinator for Ecology is:

Patrick Cabbage, LG
4601 N Monroe St
Spokane, WA 99205
Phone: 509-329-3543

The project coordinator for the PLPs are:

For UPRR: Gary Honeyman
Manager, Environmental Site Remediation
Union Pacific Railroad Company
221 Hodgeman1400
Laramie, WY 82072
Phone: 307-760-0117

For CHS: Clark J. Davis
Davis Law Office, PLLC
7525 Pioneer Way, Suite 101
Gig Harbor, WA 98335
Phone: 253-858-9423

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

D. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The PLPs shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

E. Access

RCW 70.105D.030(1)(a) authorizes Ecology or any Ecology authorized representative to enter all property at the Site that the PLPs either own, control, or has access rights to, after reasonable notice unless an emergency prevents such notice. Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the PLPs either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site

property owned or controlled by the PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). UPRR has identified a Health and Safety Plan associated with access to the railroad facility portion of the Site (attached hereto as Exhibit D). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

F. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to the implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify the PLPs prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, the PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLPs shall make all such records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the PLPs withhold any requested records based on an assertion of privilege, the PLPs shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that the PLPs elects to invoke dispute resolution, the PLPs must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the PLPs have fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating:

the nature of the dispute; the PLPs' position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The PLPs may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Eastern Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline

for which the extension is requested, and when good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. The existence of good cause shall be determined by Ecology in its sole discretion. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII.K (Endangerment).

J. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

In the event the PLPs determine that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the PLPs may cease such activities. The PLPs shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLPs' cessation of activities, it may direct the PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLPs' obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.J (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

K. Reservation of Rights

Ecology reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

L. Transfer of Interest in Property

Before any voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLPs, the PLPs shall provide for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Further, prior to the PLPs' transfer of any interest in all or any portion of the Site, the PLPs shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and at least thirty (30) days prior to any transfer, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

M. Compliance With Applicable Laws

1. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or

authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLPs determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, and that the PLPs have complied with all other provisions of this Enforcement Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. A liable party, who refuses without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

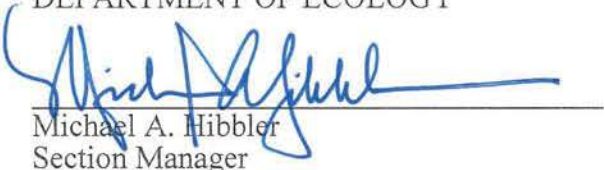
2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 12 November 2015

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Michael A. Hibbler
Section Manager
Toxics Cleanup Program
Eastern Regional Office
Spokane, WA
Phone: 509-329-3568

EXHIBIT A

Grain Handling Facility at Freeman Site



0 500 1000 feet

North

EXHIBIT B
GRAIN HANDLING FACILITY AT FREEMAN SITE
SCOPE OF WORK
REMEDIAL INVESTIGATION/FEASIBILITY STUDY

This Scope of Work is to investigate contamination at the Grain Handling Facility at Freeman site (Site) located at approximately 14603 Highway 27, Freeman, Washington. This scope of work prepared by the Washington Department of Ecology (Ecology) is to be used by the potentially liable persons (PLPs) to develop Work Plans in order to complete a Remedial Investigation/Feasibility Study (RI/FS) at the Site.

The RI is to supplement existing data and determine the nature and extent of contamination at the Site. The FS will evaluate remedial alternatives that are applicable for Site cleanup. The information and data gathered during the RI/FS will be used to identify if additional data needs to be collected and determine an appropriate remedial action. The PLPs will furnish all personnel, materials, and services necessary for, or incidental to, performing the Remedial Investigation at the Site.

The RI/FS shall contain the following tasks:

Task I: RI/FS Project Plan

A. RI/FS Work Plan

A work plan outlining procedures for the Remedial Investigation must be prepared which includes the following information:

1. Background Summary

Any pertinent Site information including, but not limited to:

- a. Maps – topographical, property lines, underground and aboveground tank locations, sumps, piping, pumping stations, well locations, surface water bodies near the vicinity of the Site, previous Site investigations; all maps will be consistent with the requirement set forth in WAC 173-340-840(4) and be of sufficient detail and accuracy to locate and report all current and future work performed at the Site.
- b. A discussion of Site history, including the location of current and former operations and activities at the Site.
- c. General geology and hydrogeology of the Site area and a brief discussion of local climate.

2. Evaluation of Existing Data

A discussion of activities and data already collected during previous investigations, including but not limited to the identification of existing and proposed locations for groundwater monitoring wells, and the potential requirement for additional data.

3. Task II Work Plans and Schedules

B. Sampling and Analysis Plan

The PLPs must prepare a Sampling and Analysis Plan for use during all Site characterization studies. The Sampling and Analysis Plan must contain:

1. Field Sampling and Testing Plans – The plan will describe in detail the sampling, testing, and data gathering methods, locations, frequency and other field study procedures that will be used for obtaining data required to complete the RI/FS. The Sampling and Testing Plan will include the following:
 - a. Specific sampling methods, including number and type of QA/QC samples.
 - b. Sampling locations and designations, including access considerations.
 - c. Types of media to be sampled and the number of samples of each.
 - d. Schedule and task assignments.
 - e. Supplies and equipment.
 - f. Monitoring well construction requirements.
 - g. Analytical procedures, methods, and detection limits.
 - h. Sample custody procedures, including holding times, containers, and preservation.
 - i. Shipping and handling arrangements.
2. Quality Assurance Project Plan (QAPP)
 - a. Field quality assurance/quality control (QA/QC) methods.
 - b. Chain of custody procedures.
 - c. Decontamination procedures.

- d. Laboratory QA/QC methods.
- 3. Health and Safety Plan
 - a. Level of protection.
 - b. Hazard evaluation.
 - c. Waste characteristics.
 - d. Special considerations and emergency information.

C. Public Participation Plan

Ecology will prepare a Public Participation Plan in accordance with WAC 173-340-600. The PLPs will be provided an opportunity to provide feedback about the Plan and participate in the implementation.

Task II: Remedial Investigation

The purpose of the Remedial Investigation is to obtain the information necessary to characterize the Site including sources, types, and extent of contamination present to sufficiently complete the Feasibility Study. The resulting data must meet the criteria set out in the QAPP and be of sufficient quality to develop an appropriate remedial action for the Site. The investigation will meet the requirements stated in WAC 173-340-350 and, more specifically, must include the following elements:

A. Site Characterization

Collect analytical data on groundwater and soils contamination in the vicinity of the Site. Considering information on historical operations and hydrogeology, the data must be sufficient to delineate the depth, areal extent, velocity and direction of contaminant movement, type, and concentration of contaminants.

- 1. Collect background information from the previous environmental investigations, other Ecology information, and any other historical data.

2. Hydrogeology

An investigation of the regional and Site specific geologic and hydrogeologic characteristics affecting groundwater flow beneath the Site

- a. Evaluate and monitor all existing monitoring wells.
- b. Install new groundwater monitoring wells and soil borings where needed.
- c. Measure water levels in all wells and new borings.

- d. Characterize regional stratigraphy and lithology based on well logs, maps, and any other information available.
- e. Estimate hydraulic conductivity and porosity based on well logs, samples, and other general information available.
- f. Prepare maps showing water levels and regional/Site hydrogeology.

3. Soils

- a. Install soil borings and/or test pits, where needed.
- b. Characterize soil samples using the Unified Soil Classification System (USCS).
- c. Prepare logs for all borings and test pits.
- d. Collect soil vapor samples, where needed, to evaluate the vapor intrusion pathway.

B. Source and Contamination Characterization

- 1. Sampling locations will be selected to characterize the contamination.
- 2. Collect soil and groundwater samples sufficient to delineate nature and extent of contaminants and their impact to the environment.
- 3. Analytical data collected must help describe the nature, extent, and potential sources of contamination.

C. Potential Receptor Information

Collect data on the surrounding human and ecological populations that may be in contact with contaminants and potential routes of exposure for those populations.

- 1. Public Use/Site Access – Potential uses of the affected properties and the presence or absence of controls on Site access.
- 2. Potential Groundwater/Surface Water Uses – Any consumptive, recreational, or other use of groundwater and surface water in the area, and by which populations.
- 3. Environmental Receptors – Information on the presence of endangered or threatened species, potential habitats, and ecological environments.

Task III: RI/FS Report

The PLPs will complete a report documenting the Remedial Investigation/Feasibility Study as required by WAC 173-340-350(7) and (8). This report will include the following elements:

A. Remedial Investigation

1. Background Information

- a. Site History.
- b. Previous Studies.

2. Nature and Extent of Contamination

The PLPs will prepare an assessment and description of the degree and extent of contamination. This should include:

- a. Data Analysis – Analyze all data collected during Task II and prepare supporting maps and tables.
- b. Lab reports, previous investigations, well and boring logs, and any other documentation of characterization activities must be included.

3. ARARs Analysis

Identify Applicable local, State and Federal Laws for cleanup of the Site in accordance with WAC 173-340-710.

4. Cleanup Levels/Risk Assessment Analysis

Perform a baseline Model Toxics Cleanup Act (MTCA) cleanup levels analysis/baseline risk assessment characterizing the current and potential threats to public health and the environment that may be posed by hazardous substances at the facility. The assessment will integrate cleanup standards and risk assessment as required by WAC 173-340-357 and WAC 173-340-708.

5. Discussion and Recommendations

- a. Interpret and discuss data to determine the nature and extent of the contamination and to support final recommendations for the Site.
- b. A summary of all possible and suspected source areas of contamination based on the data collected will be included.
- c. Any known or potential risks to the public health, welfare, and the environment should be discussed.

- d. Recommendations should be provided identifying additional data requirements.

B. Feasibility Study

- a. Identification of contamination to be remediated.
- b. Identification and initial screening of treatment technologies.
- c. Proposed remedial alternatives and evaluation with respect to MTCA criteria.
- d. Recommended alternative.

Schedule of Deliverables

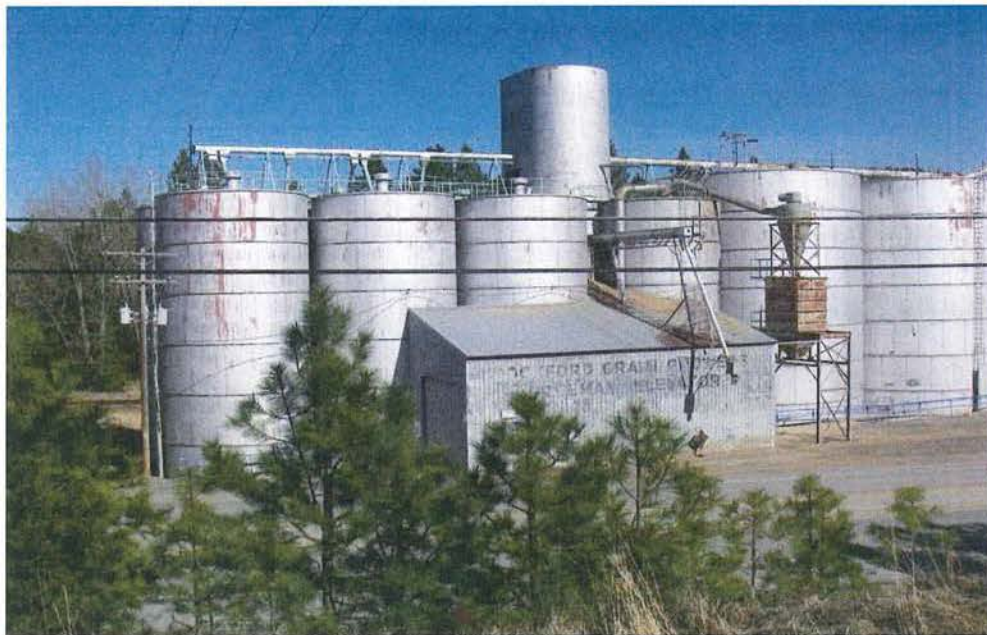
<u>Deliverables</u>	<u>Date Due</u>
Effective date of Order	Start
PLPs to Submit Agency Review Draft RI/FS Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Schedule of Work to be Performed	30 days after start
PLPs to Submit Revised RI/FS Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Schedule of Work to be Performed	30 days after PLPs receive Ecology's comments on Draft Documents
PLPs to Submit Final RI/FS Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Schedule of Work to be Performed	14 days after PLPs receive Ecology's written approval of Revised RI/FS Work Plan
PLPs to begin implementation of RI	30 days after PLPs receive Ecology's written approval of Revised RI/FS Work Plan
PLPs to Submit Agency Review Draft RI/FS Report	12 months after PLPs receive Ecology's written approval of Revised RI/FS Work Plan
PLPs to Submit Revised, Public Review Draft RI/FS Report	30 days after PLPs receive Ecology's comments on Draft Document
PLPs to Submit Final RI/FS Report	30 days after PLPs receive Ecology's written approval of Revised RI/FS Report draft
Progress Reports	Every 3 months



Exhibit C

WA State Department of Ecology Draft Public Participation Plan for Environmental Cleanup Work at the

Grain Handling Facility at Freeman Site Facility Site ID No. 77319379 Cleanup Site ID No. 12540



The site is generally located at 14603 Highway 27 in Freeman, Spokane County, Washington
Looking Southeast at the site

To request **ADA** accommodations or materials in a format for the visually impaired call Mike Hibbler
509/329-3568, Relay Service at 711, or TTY 877-833-6341.

Table of Contents

Introduction: Getting Involved in Cleanup at the Grain Handling Facility at Freeman Site

What is a Public Participation Plan?

Overview of the Public Participation Plan and Model Toxics Control Act (MTCA)

Public Participation Grants and Technical Assistance

Amendments

Review of Documents and Project Contacts

Site Background

 Identification of Contamination at the Freeman School District

 Actions Taken to Address Contamination in the Freeman School District Well

 Cleanup to be Coordinated with Harvest

 How are Cleanup Costs Paid?

 Contaminants of Concern

The Cleanup Process

Community Background

 Community Overview

 Community Concerns

Public Participation Activities and Timeline

Answering Questions from the Public

Appendix A Site Map

Appendix B Mailing List

Appendix C Glossary

Introduction: Getting Involved in Cleanup at the Grain Handling Facility at Freeman Site

Ecology knows that the most successful cleanup projects are those where communities get involved, learn about the issues, provide feedback about the project, and work together to improve the outcome.

We encourage you to learn about and get involved in decision-making opportunities at the Grain Handling Facility at Freeman site. Opportunities are available during specific stages of the investigation and cleanup of contamination at the site. The site is generally located at 14603 Highway 27 in Freeman, Spokane County, Washington. Ecology believes the cleanup actions required at this site are in the public interest.

What is a Public Participation Plan?

The Plan provides an overview of the Plan and the Model Toxics Control Act (MTCA), which guides the formal cleanup process at sites in Washington State. This document also outlines:

- The purpose of the Plan.
- When public notices will occur.
- The amount of time the public has to comment.
- Where the potentially affected area is located.
- Ways the public may get involved in providing feedback.
- The site background, a community profile, and community concerns.

Purpose of the Plan

The Public Participation Plan has three main purposes:

- To promote public understanding of the Washington Department of Ecology's (Ecology) responsibilities, planning, and cleanup activities at the site.
- To serve as a way of gathering information from the public. This information will assist Ecology and the potentially liable persons (PLPs) to conduct the investigation and plan for cleanup in a way that is protective of human health and the environment.
- To inform the community living near the site, as well as the general public, about cleanup activities and how to contribute to the decision-making process.

The participation needs are assessed at each site according to the level of public interest and degree of risk posed by contaminants. Individuals who live near the site, community groups, businesses, government, other organizations and interested parties are provided an opportunity to become involved in commenting on the cleanup process.

Overview of the Public Participation Plan and Model Toxics Control Act (MTCA)

The Plan is required under authority of the Model Toxics Control Act. MTCA is a "citizen-mandated" law that became effective in 1989 to provide guidelines for the cleanup of contaminated sites in Washington State. This law sets standards to make sure the cleanup of sites is protective of human health and the environment. A glossary of MTCA terms is included as Appendix C of this Plan.

Ecology's Toxics Cleanup Program investigates reports of contamination that may threaten human health and the environment. If contaminants are confirmed during an investigation, the site is generally ranked and placed on a Hazardous Sites List (HSL). The Grain Handling Facility at Freeman site ranked a [] on the Hazardous Sites List. A rank of one represents the highest level of concern and five the lowest.

Current and former owners or operators, as well as any other potentially liable persons (PLPs) of a site, may be held responsible for cleanup of contamination based on MTCA. Ecology identified Cenex Harvest States (CHS) and Union Pacific Railroad Company (UPRR) as the PLPs for this site.

Public participation is an important part of cleanup under the MTCA process. The participation needs are assessed at each site according to the level of public interest and degree of risk posed by contaminants. Individuals who live near the site, community groups, businesses, government, other organizations and interested parties are provided an opportunity to become involved in commenting on the cleanup process.

The Plan includes requirements for public notice such as:

- Identifying reports about the site.
- The repositories where reports may be read.
- Providing public comment periods.
- Holding public meetings or hearings.

Other forms of participation may be interviews, citizen advisory groups, questionnaires, or workshops.

Public Participation Grants and Technical Assistance

Additionally, citizen groups living near contaminated sites may apply for public participation grants (during open application periods). These grants help citizens receive technical assistance in understanding the cleanup process and create additional public participation avenues.

NOTE: Ecology currently does not have a citizen technical advisor for providing technical assistance to citizens on issues related to the investigation and cleanup of the site.

Amendments

The Plan was developed by Ecology and complies with the Model Toxics Control Act regulations (Chapter 173-340-600 WAC). It will be reviewed as cleanup progresses and may be amended if necessary. Amendments may be submitted to Ecology's site manager, Patrick Cabbage, for review and consideration. Ecology will determine final approval of the Plan as well as any amendments.

Review of Documents and Project Contacts

Documents relating to the cleanup may be reviewed at the repositories listed on page 11 of this Plan. If individuals are interested in knowing more about the site or have comments regarding the Plan, please contact one of the individuals listed below.

WA Department of Ecology Contacts Patrick Cabbage, LG WA State Department of Ecology Eastern Regional Office Toxics Cleanup Program 4601 N. Monroe Spokane, WA 99205 509/329-3543 e-mail patrick.cabbage@ecy.wa.gov Kari Johnson, Public Disclosure WA State Department of Ecology Eastern Regional Office 4601 N. Monroe Spokane, WA 99205 509/329-3415 e-mail kajo461@ecy.wa.gov	Para asistencia Español Greg Bohn WA State Department of Ecology Central Regional Office Toxics Cleanup Program Greg Bohn (509) 454-4174 Если вам нужна помощь на русском, звоните Larissa Braaten 509/710-7552 ----- Cenex Harvest States (CHS) Contact Clark J. Davis Davis Law Office, PLLC 7525 Pioneer Way, Suite 101 Gig Harbor, WA 98335 253/858-9423 email cdavis@cj-d-law.com Union Pacific Railroad Company (UPRR) Contact
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	Gary Honeyman Manager, Environmental Site Remediation 221 Hodgeman 1400 Laramie, WY 82072 307/760-0117 email glhoneym@up.com
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Site Background

The site is generally located at 14603 Highway 27 in Freeman, Spokane County, Washington. Ecology believes the actions required by this Order are in the public interest.

The Washington State Department of Ecology plans to issue an Enforcement Order to Cenex Harvest States (CHS) and Union Pacific Railroad Company (UPRR). The Order requires CHS and UPRR, the potentially liable persons (PLPs) to conduct a Remedial Investigation and Feasibility Study at the Grain Handling Facility at Freeman site. The investigation will provide answers about the *carbon tetrachloride* and *chloroform* contamination in soil and groundwater, determine sources of the carbon tetrachloride and any other contaminants, and define where contamination is located. The Feasibility Study will identify and evaluate the best methods to clean up the contamination.

Identification of Contamination at the Freeman School District

The Freeman School District routinely samples the well that supplies drinking and irrigation water for the elementary, middle, and high schools. A chemical called carbon tetrachloride was detected at very low levels in the well water in January 2001. These low levels did not exceed the state drinking water standards.

Testing continued and detections of the chemical were sporadic. In 2008 carbon tetrachloride levels exceeded drinking water standards and actions needed to be taken to address the contamination.

Actions Taken to Address Contamination in the Freeman School

District Well

The Freeman School District obtained a residential property, known as the (b) (6) property, as part of the district expansion which was unrelated to the contamination issue. A water supply well on that property was tested in the hopes it could be a substitute well for the district. However, it also showed carbon tetrachloride at levels too high to consider as an alternate source of water.

The school district applied for and received grant dollars from the WA Department of Health to further investigate the problem. In August 2013 an air stripper treatment system was installed to remove (and strip) volatile organic compounds such as carbon tetrachloride from the drinking water. The water treatment continues to be successful. The District continues to monitor drinking water each month and sampling has met all state and federal drinking water requirements for the past 18 months. The system continues to work effectively.

Cleanup to be Coordinated with Harvest

Ecology plans to move forward with the investigation and make every effort to take harvest activities into consideration. A schedule of the investigation will be more clearly defined as additional information is obtained. Ecology will work with the Grain Handling Facility and local farmers/organizations regarding schedules.

How are Cleanup Costs Paid?

Under the Model Toxics Control Act (MTCA), which guides cleanup of contaminated sites in the State of Washington, past and present property owners and operators are responsible to pay for investigation and cleanup of contaminants. Cenex Harvest States and Union Pacific Railroad Company are identified as potentially liable persons (PLPs) responsible for contributing toward the cost of investigation and cleanup at this site.

Contaminants of Concern

Currently, we know carbon tetrachloride and chloroform have been found in soil and groundwater at levels that exceed the standards for the State of Washington. The Remedial Investigation will identify where contamination is located and the Feasibility Study will identify and evaluate options to clean up the contamination.

What is Carbon Tetrachloride?

It is a man-made chemical that does not break down quickly in the environment. It was widely used as an agricultural pesticide and fumigant to kill insects and rodents in grain storage facilities. It was also used to make refrigerants and propellants for aerosol cans, metal degreasing, as a dry cleaning agent and other uses. In 1985 the EPA banned the use of carbon tetrachloride for agricultural and other uses except some industrial applications.

Why is Chloroform found at the Site?

Chloroform is a byproduct of the breakdown of carbon tetrachloride. Chloroform is used to make other chemicals and can also be formed in small amounts when chlorine is added to water.

The Cleanup Process

The following is a general outline of the cleanup process. There may be variables at a site that require additional steps. Sometimes steps are combined, if appropriate, to move the cleanup forward more quickly.

This Public Participation Plan is part of the Enforcement Order for the Remedial Investigation and Feasibility Study and associated documents. This begins the formal phase of cleanup and a 30-day comment period will be held to gather feedback about the Plan, Enforcement Order, and Scope of Work. Ecology will respond to comments received and modify the documents if necessary.

Next, reports from the Remedial Investigation and Feasibility Study will be made available for a 30-day comment period. Public comment is considered, and then if no changes are made, the documents become final. After the documents become final, if no interim actions are necessary to protect the public and environment, a draft Cleanup Action Plan (DCAP) is prepared by Ecology and sent out for public comment. The DCAP identifies and evaluates the cleanup alternative(s) Ecology selected.

Environmental impacts of the project also are considered and a State Environmental Policy Act checklist and determination is made available for public review along with the DCAP. After the Draft Cleanup Action Plan becomes final, the parties will enter into a legal agreement to implement the cleanup. Once the cleanup is completed there is generally long-term monitoring and every five years a periodic review is conducted to determine the continued effectiveness of the cleanup.

Community Background

Community Overview

The site is located Spokane County in the rolling hills of the Palouse farming area of Eastern Washington. The area is often cited by photographers as one of the most beautiful areas for stunning photos of wildflowers, seasonal changes of crops, wildlife, and general farming scenery. Many in the community rely on farming as their sole source of income.

The area is also filled with a rich history and books have been written about early explorers, legends of the area, geology, and other topics. There is a sense of community pride, hard work, and an expectation of honesty in business and community relationships.

The population is primarily made up of English-speaking Caucasians, with slightly more males than females, and the median age is 44. Younger individuals and families are moving into the area as it is growing and beginning to change the make-up of the area.

The site is located near the Freeman School District which serves approximately 900 students and is the hub of community activity and information. The site is in an area where three communities converge; Freeman, Rockford, and Valleyford. Mica and Fairfield are also located near the site. The community is made up of three active legislative districts, generally conservative in nature.

Community Concerns

Ecology began conducting community interviews in April of 2015 to understand community concerns about the site. Anyone who is interested may participate in an interview. Based on the interviews completed to date and feedback from the public meeting held on April 22, 2015, the following are some of the main concerns:

- ❖ How has Ecology determined that the grain elevators are the source of the carbon tetrachloride and chloroform contamination?
- ❖ How widespread is the contamination?
- ❖ Will the investigation spread into other communities and other properties that have grain elevators?
- ❖ What are the health impacts and should we be concerned about our wells?
- ❖ Will the proposed investigation and cleanup work negatively impact property values?
- ❖ Why is it necessary to list the site on the Environmental Protection Agency's National Priorities List (Superfund Site)?
- ❖ Will the investigation and cleanup disrupt farming or interactions with the grain elevators?
- ❖ Concerns were expressed that the operators of the Grain elevators followed legal, best practices in the past and are now liable for cleanup. Will farmers who are using best practices for chemical applications be penalized and become liable in the future?
- ❖ Will cleanup result in long-term clean water for the school and less expense to the school?
- ❖ Does Ecology have experience in cleaning up this type of contamination?

You may review more questions and Ecology's answers by going to Ecology's website for the Grain Handling Facility at Freeman at

<https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=12540> and reviewing "Questions and Answers from the public meeting" which was held April 22, 2015.

Public Participation Activities and Timeline

The following are public participation efforts that have occurred and will continue until the cleanup actions are completed:

- ❖ A **mailing list** has been developed for people who live near the site. It also includes businesses, organizations, and other individuals who have expressed interest in the cleanup process for the site. People on the mailing list will receive copies of fact sheets developed regarding the cleanup process via first class mail. Additionally, individuals, organizations, local, state and federal governments, and any other interested parties will be added to the mailing list upon request. Other people who are interested may request to be added to the mailing list by contacting Patrick Cabbage at the Department of Ecology (see Page 4 of this Plan for Patrick's contact information).

- ❖ **Public Repositories** have been established and documents may be reviewed at the following offices:

Washington State Department of Ecology

Eastern Regional Office

4601 North Monroe

Spokane, WA 99205-1295

Contact: Kari Johnson 509/329-3515

E-mail: kari.johnson@ecy.wa.gov

Ecology's website: <https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=12540>

Fairfield Library
305 East Main St.
Fairfield, WA 99012
(509) 893-8320

Moran Prairie Library
6004 S. Regal Street
Spokane, WA 99223
509/893-8340

Spokane Valley Library
12004 E. Main Avenue
Spokane, WA 99206
509/893-8400

- ❖ During each stage of the cleanup process, **fact sheets** are created by Ecology, reviewed by Cenex Harvest States and Union Pacific Railroad Company, and distributed to individuals on the mailing list. These fact sheets explain the current status of the cleanup process, give a brief background, and ask for comments from the public. A **30-day comment period** allows the public time to comment at specific stages during the cleanup process.

Display ads or legal notices are published in the **Spokesman Review** to inform the general public. These notices correlate with the 30-day comment period and associated stage of the cleanup process. They are also used to announce public meetings, workshops, open houses, or hearings. Notices will also be provided through the Freeman Focus Newsletter published by the Freeman School District.

- ❖ **Public meetings, workshops, open houses and public hearings** are held based upon the level of community interest. If ten or more persons request a public meeting or hearing based on the subject of the public notice, Ecology will hold a meeting or hearing and gather comments. Public meetings must be held in a facility that meets the Americans with Disabilities Act (ADA).

A public meeting was held at the Freeman School District, K-8 Multipurpose Room on April 22 in Freeman, Spokane County, Washington. The date, time and locations of future hearings, meetings, workshops, or open houses will be announced in a legal notice in the newspaper, fact sheets, or display ads in accordance with the Model Toxics Control Act (MTCA).

- ❖ Written comments which are received during the 30-day comment periods may be responded to in a **Responsiveness Summary**. The Responsiveness Summary may be sent to those who make written comments and will be available for public review at the Repositories listed on page 8 of this Public Participation Plan.

Public Participation Time Line

Document or Activity	Date
Began conducting community interviews to understand community concerns about the site.	April 2015
Public Meeting to discuss current knowledge about the site, the proposed investigation, and Ecology's role as the lead agency.	April 22, 2015 at the Freeman School District K-8 Multipurpose Room
Ecology entered into negotiations with Cenex Harvest States and Union Pacific Railroad Company for an Agreed Order requiring a Remedial Investigation and Feasibility Study at the site.	June 25, 2015
Ecology proposed to issue an Enforcement Order to Cenex Harvest States and Union Pacific Railroad Company requiring a Remedial Investigation and Feasibility Study at the site.	October 1, 2015
Ecology issued an Enforcement Order to Cenex Harvest States and Union Pacific Railroad Company requiring a Remedial Investigation and Feasibility Study at the site.	November 12, 2015

Answering Questions from the Public

Individuals may want to ask questions about the site, the cleanup process and how to get involved. A list of contacts is provided on page 4 of this Plan.

Appendix A Site Map

Grain Handling Facility at Freeman Site



Appendix B
Mailing List
(Made available upon request)

APPENDIX C GLOSSARY

Agreed Order: A legal document issued by Ecology which formalizes an agreement between the department and potentially liable persons (PLPs) for the actions needed at a site. An agreed order is subject to public comment. If an order is substantially changed, an additional comment period is provided.

Applicable State and Federal Law: All legally applicable requirements and those requirements that Ecology determines are relevant and appropriate requirements.

Area Background: The concentrations of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.

Carcinogen: Any substance or agent that produces or tends to produce cancer in humans.

Chronic Toxicity: The ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

Cleanup: The implementation of a cleanup action or interim action.

Cleanup Action: Any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup levels; utilizes permanent solutions to the maximum extent practicable; and includes adequate monitoring to ensure the effectiveness of the cleanup action.

Cleanup Action Plan: A document which identifies the cleanup action and specifies cleanup standards and other requirements for a particular site. After completion of a comment period on a Draft Cleanup Action Plan, Ecology will issue a final Cleanup Action Plan.

Cleanup Level: The concentration of a hazardous substance in soil, water, air or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

Cleanup Process: The process for identifying, investigating, and cleaning up hazardous waste sites.

Consent Decree: A legal document approved and issued by a court which formalizes an agreement reached between the state and potentially liable persons (PLPs) on the actions needed at a site. A decree is subject to public comment. If a decree is substantially changed, an additional comment period is provided.

Containment: A container, vessel, barrier, or structure, whether natural or constructed, which confines a hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

Enforcement Order: A legal document, issued by Ecology, requiring remedial action. Failure to comply with an enforcement order may result in substantial liability for costs and penalties. An enforcement order is subject to public comment. If an enforcement order is substantially changed, an additional comment period is provided.

Environment: Any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington.

Exposure: Subjection of an organism to the action, influence or effect of a hazardous substance (chemical agent) or physical agent.

Exposure Pathways: The path a hazardous substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from the site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the source exposure point differs from the source of the hazardous substance, exposure pathway also includes a transport/exposure medium.

Facility: Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed or, placed, or otherwise come to be located.

Feasibility Study (FS): A study to evaluate alternative cleanup actions for a site. A comment period on the draft report is required. Ecology selects the preferred alternative after reviewing those documents.

Free Product: A hazardous substance that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water).

Groundwater: Water found beneath the earth's surface that fills pores between materials such as sand, soil, or gravel. In aquifers, groundwater occurs in sufficient quantities that it can be used for drinking water, irrigation, and other purposes.

Hazardous Sites List: A list of sites identified by Ecology that requires further remedial action. The sites are ranked from 1 to 5 to indicate their relative priority for further action.

Hazardous Substance: Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) (any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes; (a) have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic

properties; or (b) are corrosive, explosive, flammable, or may generate pressure through decomposition or other means,) and (6) (any dangerous waste which (a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may affect the genetic makeup of man or wildlife; and is highly toxic to man or wildlife; (b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment), or any dangerous or extremely dangerous waste as designated by rule under Chapter 70.105 RCW; any hazardous substance as defined in RCW 70.105.010 (14) (any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter,) or any hazardous substance as defined by rule under Chapter 70.105 RCW; petroleum products.

Hazardous Waste Site: Any facility where there has been a confirmation of a release or threatened release of a hazardous substance that requires remedial action.

Independent Cleanup Action: Any remedial action conducted without Ecology oversight or approval, and not under an order or decree.

Initial Investigation: An investigation to determine that a release or threatened release may have occurred that warrants further action.

Interim Action: Any remedial action that partially addresses the cleanup of a site.

Mixed Funding: Any funding, either in the form of a loan or a contribution, provided to potentially liable persons from the state toxics control account.

Model Toxics Control Act (MTCA): Washington State's law that governs the investigation, evaluation and cleanup of hazardous waste sites. Refers to RCW 70.105D. It was approved by voters at the November 1988 general election and known is as Initiative 97. The implementing regulation is WAC 173-340.

Monitoring Wells: Special wells drilled at specific locations on or off a hazardous waste site where groundwater can be sampled at selected depths and studied to determine the direction of groundwater flow and the types and amounts of contaminants present.

Natural Background: The concentration of hazardous substance consistently present in the environment which has not been influenced by localized human activities.

National Priorities List (NPL): EPA's list of hazardous waste sites identified for possible long-term remedial response with funding from the federal Superfund trust fund.

Owner or Operator: Any person with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned or operated or exercised control over the facility any time before its abandonment.

Polynuclear Aromatic Hydrocarbon (PAH): A class of organic compounds, some of which are long-lasting and carcinogenic. These compounds are formed from the combustion of organic material and are ubiquitous in the environment. PAHs are commonly formed by forest fires and by the combustion of fossil fuels.

Potentially Liable Person (PLP): Any person whom Ecology finds, based on credible evidence, to be liable under authority of RCW 70.105D.040.

Public Notice: At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city or county) newspaper of largest circulation; and opportunity for interested persons to comment.

Public Participation Plan: A plan prepared under the authority of WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

Recovery By-Products: Any hazardous substance, water, sludge, or other materials collected in the free product removal process in response to a release from an underground storage tank.

Release: Any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, the abandonment or disposal of containers of hazardous substances.

Remedial Action: Any action to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities of any release or threatened release of a hazardous substance and any health assessments or health effects studies.

Remedial Investigation (RI): A study to define the extent of problems at a site. When combined with a study to evaluate alternative cleanup actions it is referred to as a Remedial Investigation/Feasibility Study (RI/FS). In both cases, a comment period on the draft report is required.

Responsiveness Summary: A compilation of all questions and comments to a document open for public comment and their respective answers/replies by Ecology. The Responsiveness Summary is mailed, at a minimum, to those who provided comments and its availability is published in the Site Register.

Risk Assessment: The determination of the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

Sensitive Environment: An area of particular environmental value, where a release could pose a greater threat than in other areas including: wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

Site: See Facility.

Site Characterization Report: A written report describing the site and nature of a release from an underground storage tank, as described in WAC 173-340-450 (4) (b).

Site Hazard Assessment (SHA): An assessment to gather information about a site to confirm whether a release has occurred and to enable Ecology to evaluate the relative potential hazard posed by the release. If further action is needed, an RI/FS is undertaken.

Site Register: Publication issued every two weeks of major activities conducted statewide related to the study and cleanup of hazardous waste sites under the Model Toxics Control Act. To receive this publication, please call (360) 407-7200.

Surface Water: Lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

TCP: Toxics Cleanup Program at Ecology

Total Petroleum Hydrocarbons (TPH): A scientific measure of the sum of all petroleum hydrocarbons in a sample (without distinguishing one hydrocarbon from another). The "petroleum hydrocarbons" include compounds of carbon and hydrogen that are derived from naturally occurring petroleum sources or from manufactured petroleum products (such as refined oil, coal, and asphalt).

Toxicity: The degree to which a substance at a particular concentration is capable of causing harm to living organisms, including people, plants and animals.

Underground Storage Tank (UST): An underground storage tank and connected underground piping as defined in the rules adopted under Chapter 90.76 RCW.

Washington Ranking Method (WARM): Method used to rank sites placed on the hazardous sites list. A report describing this method is available from Ecology.

Exhibit D

Union Pacific Railroad Company Site Access Requirements

Before entering the railroad facility portion of the Site, all parties shall complete the two online safety training courses described below to raise awareness of potential health and safety issues at an active railroad facility. All parties must be able to provide proof of completion of these two courses before entering the railroad facility portion of the Site. The "Union Pacific Railroad Company Contractor Orientation Training" can be completed at www.contractororientation.com. The "On-track Safety Training" can be completed at www.railroadeducation.com. Additionally, UPRR has a Controlled Access Policy, a security program intended to provide a safe workplace and maintain the integrity and security of railroad facilities. Before entering the railroad facility portion of the Site, all parties must register with the "E-RailSafe" program at www.e-railsafe.com and be in full compliance. All parties must wear E-RailSafe badges while on the railroad facility portion of the Site.

Ecology will notify UPRR at least 24 hours in advance of any visit in which any Ecology representative or Ecology equipment will be within 25 feet of any track. Upon receipt of such notice, UPRR will determine and inform Ecology whether a flagman or UPRR official will be present and whether Ecology need implement any special protective or safety measures.

If Ecology's visit includes proposed sampling (e.g., soil or groundwater), Ecology shall participate in a job briefing conducted by UPRR. The briefing will be limited to the type of UPRR On-Track Safety for the sampling being performed and providing any special instructions relating to the work zone around machines and minimum distances. All parties will note the limits of track authority, which tracks may or may not be fouled, and clearing the track.

The following safety rules shall be followed by all parties while visiting the railroad facility portion of the Site:

- (i) All parties shall maintain a distance of at least 25 feet to any track unless UPRR has identified the conditions under which a closer distance is allowed.
- (ii) All parties shall take reasonable measures to keep the area where sampling work is performed free from safety and health hazards and ensure that its on-Site representatives are competent and adequately trained in all safety and health aspects of the sampling work performed. Ecology shall promptly notify UPRR of any U.S. Occupational Safety and Health Administration reportable injuries that occur to any Ecology representative during the sampling work performed.

(ii) No persons accessing the railroad facility portion of the Site shall use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance.

(iii) All parties shall wear the following appropriate personal protective equipment as specified by UPRR:

- An orange, reflectorized vest, or similar orange, reflectorized workwear approved by UPRR; only waist length shirts with sleeves and trousers that cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching;
- Sturdy and protective footwear (no boots other than work boots, sandals, canvas type shoes, or other shoes that have thin soles or heels that are higher than normal shall be worn);
- Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all Ecology employees' hardhats be affixed with Ecology's logo or name;
- Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision; and
- Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring in the railroad facility portion of the Site.